valid regulation. The main purpose of the proviso of § 3 of 24 Stat. 380 was undoubtedly to prevent arbitrary regulations from depriving one road of an advantage in a competitive situation over others. But where this conflicts with the main purpose of the statute, the larger public policy of preventing discrimination outweighs the purpose of the proviso and the former prevails. In short, in many of the cases that have already come up, and will undoubtedly arise in the future, involving problems of the sort that were present in the instant case, the question is fundamentally: which of two factors in public policy shall prevail where the two are in apparent or real conflict? The policy of preventing discrimination by the railroads, or that of maintaining the right of private property in respect to the facilities of transportation? H. R.

THE CONSTITUTIONALITY OF SEGREGATION ORDINANCES.—In the recent case of *Carey* v. *City of Atlanta,* 84 S. E. 456, the Supreme Court of Georgia has passed upon the difficult question as to the validity of segregation ordinances. The ordinance in question was passed by the city council under the general welfare clause of the city charter and was based upon the ordinance involved in the recent case of *State* v. *Gurry,* 121 Md. 534, 88 Atl. 546, 47 L. R. A. (N. S.) 1087. In that case, though arguing strongly in favor of the constitutionality of the ordinance as far as due process and "equal protection" were concerned, the law was declared invalid because the city lacked the power to pass it, and so no direct decision on the point of constitutionality was given. In *State* v. *Darnell,* 166 N. C. 300, 81 S. E. 338, 51 L. R. A. (N. S.) 332, a case which involved a practically similar ordinance as in *State* v. *Gurry,* and which was decided adversely on the same point, the court argues against the constitutionality of the act. These two decisions, together with *Town of Ashland* v. *Coleman,* a nisi prius report cited in 19 VA. LAW REG. 427, declaring such an ordinance constitutional, were the only authorities on such ordinances prior to the instant case, and the Virginia case was the only direct authority on the subject of their constitutionality. At first sight the instant case would seem to meet squarely the constitutional point raised in the prior cases, and to decide adversely to the Virginia case and the dicta in the *Gurry* case, but it seems that the cases can be distinguished because of vital differences in the ordinances. In the earlier cases the ordinances either were, first, restricted to blocks where all the residents were negroes or all whites and declaring it unlawful for a member of the opposite race to move into a block occupied entirely by members of the other race, or second, restricted to blocks where the majority of the residents were of one race or the other and declaring it unlawful for a member of the minority race to move in. The ordinance in the instant case goes further in that it makes provision not only for blocks in which the population is entirely of one race but the amendment provides for blocks which are "mixed" as follows,—"Sect. 1,—It shall be unlawful for any colored person to move into * * * any house * * * previously * * * occupied by white people and where white people are still living in houses * * * adjoining the same, without the consent of the white people in said

adjoining house * * *." Sect. 2 of the amendment is a similar provision relating to whites. This amendment brings into the case an entirely new element that in the opinion of the court carries the case over the line, whatever may be said as to the constitutionality of the ordinances in the previous cases. Take for instance a block in which three successive house-owners were two whites and a negro. The middle white owner could not move out and let a negro move in over the objection of the adjacent white owner. And should the middle white owner sell to a negro the purchaser could not rent to one of his own race without the same permission. And if the three owners were two negroes and a white, the result would be the same. Besides opening the door to numerous frauds, the situation might deny the owner all beneficial use and enjoyment of his property without a hearing and without any compensation. This, says the court "is opposed to the guaranty as embodied in the due process clauses of the state and federal Constitutions." Such an amendment would also seem to be in effect a delegation to individuals of the right to say in what manner the property of another should be used. COOLEY, CONSTITUTIONAL LIMITATIONS, (7 ed.) 163. Such a state of affairs could not arise under an ordinance framed as the one in the *Gurry* case, as in that nothing is left to the discretion of the individual owner.

If the above distinctions be well founded we are still left without a direct authority upon the constitutionality of such an ordinance in its unamended form. The constitutional principles are discussed in a note on the *Gurry* case in 12 MICH. LAW REV. 215, and also in a note in 47 L. R. A. (N. S.) 1087. The question is a close one and forceful arguments can be advanced upon both sides. M. K. B.